IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5873 OF 2004

Smt. Bimladevi P. Damani
and Anr. ...Petitioners

V/s

Mr. S.P. Apsingekar
and Anr. ...Respondents.

Mr. M.L. Patil for the applicants.
Mrs. Lata Desai for respondent No.1.
Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.
DATE : 29TH MARCH, 2005

P.C.:

1. Heard the learned Counsel for the Petitioners and

the learned Counsel for respondent No.1.

2. Petitioners are challenging the issuance of process by the Metropolitan Magistrate, 38th Court, Ballard Estate, Mumbai on a complaint being filed by the Inspector, Security Guards Board for Greater Bombay and Thane District under the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Scheme, 1981 read with section 3(3) of the Act and punishable under clause 39 of the said Scheme,

1981.

3. A complaint was filed against the three ladies and

it is stated in the complaint that the accused No.1 is a Factory registered under the Factories Act and, therefore, the provisions of the Act are applicable to the said Factory. It is also stated in the complaint that the accused is an Establishment registered under the Bombay Shops and Establishments Act. From the perusal of the complaint, it can be seen that there is no averment in the said complaint that the petitioners are either in charge of or in control or responsible for the affairs of the Factory and/or Company. Three separate applications were preferred by all the accused for recalling the process. Application filed by Gopabai B. Damani for recalling the process was allowed by the Magistrate on 26/3/2004. However, though two other applications were filed by the present petitioners, no orders were passed on the said applications in view of the Judgment of the Supreme Court in the case of Adalat Prasad Vs. Rooplal Jindal & Ors reported in 2004(4) Mah.L.J. 274. Petitioners have, therefore, filed this application under section 482 of the Code of Criminal Procedure.

4. From the perusal of the complaint, it can be seen that there is not even a single averment stating that the petitioners are in charge and/or in control and/or responsible for the affairs of the said Factory and/or Company. There is obviously a complete

non-application of mind on the part of the Additional Chief Metropolitan Magistrate when he issued process against the petitioners. Accused No.1 is discharged by the Magistrate. She is an old lady of 82 years of age. Present petitioners are 64 years and 52 years of age respectively. Taking an over all view of the matter and in the facts and circumstances of the case, process issued by the Magistrate is liable to be recalled. Process and the complaint is hereby quashed and set aside.

5. Application is allowed in the above terms.

V.M. KANADE,J.